

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 92-116 ✓

In re Applications of

UHURU
COMMUNICATIONS, INC.

File No. BRED-910130WF

RECEIVED

For Renewal of License
of Station WUCI-FM
Binghamton, New York

JUN 8 1992

and

FCC MAIL BRANCH

WSKG PUBLIC
TELECOMMUNICATIONS
COUNCIL

File No. BPED-910501MB

For a Construction Permit
for a New FM Station
Binghamton, New York

ARROWHEAD
CHRISTIAN CENTER

File No. BPED-910501MC

For a Construction Permit
for a New FM Station
Binghamton, New York

HEARING DESIGNATION ORDER

Adopted: May 15, 1992;

Released: June 8, 1992

By the Chief, Audio Services Division, Mass Media Bureau:

1. The Commission, by the Chief, Audio Services Division, Mass Media Bureau, has before it for consideration: (a) the application of Uhuru Communications, Inc. (Uhuru) for renewal of license of Station WUCI-FM, Binghamton, New York, and (b) the applications of WSKG Public Telecommunications Council (WSKG) and Arrowhead Christian Center (Arrowhead) for a construction permit for a new FM station on Channel 218A at Binghamton, New York. All three applications are mutually exclusive because WUCI-FM is currently licensed to operate on Channel 218A.

2. *Uhuru's Silence.* By notification dated April 2, 1991, from the Chief, FM Branch, Audio Services Division, Mass Media Bureau, special temporary authorization was granted through July 1, 1991, to permit Station WUCI-FM

to remain silent. Since that time the station has been off the air without permission. Additionally, NTIA has reclaimed much of its equipment from WUCI-FM which precludes the licensee's ability to broadcast. Because the licensee has been off the air for an extended period of time without authorization, lacks the equipment to operate the station, does not have Commission permission to remain off the air, and has not turned in its license, it is in apparent violation of 47 C.F.R. §§ 73.1740 and 73.1750. Accordingly, an appropriate issue will be specified against Uhuru.

3. *WSKG's Site Availability.* WSKG proposes to operate at the same site as the renewal applicant. However, in the *First Report and Order In the Matter of Formulation of Rules and Policies... Relating to the Comparative Renewal Process*, the Commission rescinded the *Cameron*¹ presumption, stating "[i]f a renewal challenger is unable to provide reasonable assurance of transmitter site availability this will be designated as an issue in the comparative proceeding." 4 FCC Rcd 4780, 4788-89 (1989). Since WSKG has failed to provide reasonable assurance that Uhuru's site will be available to it, an appropriate issue will be specified.

4. *Environmental Issues.* Our engineering study indicates that all three applicants failed to address the matter of how they propose to resolve any RF exposure to workers on their respective towers. See 47 C.F.R. § 1.1307(b). Consequently, we are concerned that each may have failed to comply with the environmental criteria set forth in the *Report and Order in Gen. Docket No. 79-163*, 51 Fed. Reg. 14999 (April 12, 1986). See also, *Public Notice* entitled "Further Guidance for Broadcasters Regarding Radiofrequency Radiation and the Environment" (released January 24, 1986). Under the rules, applicants must determine whether their proposals would have a significant environmental effect under the criteria set out in 47 C.F.R. § 1.1307. If the application is determined to be subject to environmental processing under the 47 C.F.R. § 1.1307 criteria, the applicant must then submit an Environmental Assessment (EA) containing the information delineated in 47 C.F.R. § 1.1311. § 1.1307 states that an EA must be prepared if the proposed operation would cause exposure to workers or the general public to levels of RF radiation exceeding specific standards. Since the applicants failed to indicate how workers engaged in maintenance and repair would be protected from exposure to levels exceeding the ANSI guidelines, each will be required to submit the environmental impact information described in 47 C.F.R. § 1.1311. See generally, OST Bulletin No. 65 (October, 1985) entitled "Evaluating Compliance with FCC-Specified Guidelines for Human Exposure to Radiofrequency Radiation," at 28. Therefore, each will be required to file, within 30 days of the receipt of this *Hearing Designation Order*, an EA with the presiding Administrative Law Judge. In addition, a copy shall be filed with the Chief, Audio Services Division, who will then proceed regarding this matter in accordance with the provisions of 47 C.F.R. § 1.1308. Accordingly, the comparative phase of the case will be allowed to begin before the environmental phase is completed. See *Golden State Broadcasting Corp.*, 71 FCC 2d 2289 (1979), *recon. denied sub nom. Old Pueblo Broadcasting Corp.*, 83 FCC 2d 337 (1980). In the event the Mass Media Bureau determines,

¹ In *George E. Cameron Jr. Communications*, 71 FCC 2d 460, 467 (1979), the Commission established the presumption that an

incumbent's transmitter site would be available to a successful challenger in a comparative renewal proceeding.

based on its analysis of the Environmental Assessments that the proposals will not have a significant impact upon the quality of the human environment, the contingent environmental issue shall be deleted and the presiding judge shall thereafter not consider the environmental effects of the proposals. See 47 C.F.R. § 1.1308(d).

5. *Share-time Arrangement.* None of the applicants has indicated whether an attempt has been made to negotiate a sharetime arrangement. Therefore, an issue will be specified to determine whether a share-time arrangement among the applicants will be the most effective use of the frequency and thus better serve the public interest. *Granfalloon Denver Educational Broadcasting, Inc.*, 43 Fed. Reg. 49560 (1978). In the event that this issue is resolved in the affirmative, an issue will also be specified to determine the nature of such an arrangement. It should be noted that our action specifying a share-time issue is not intended to preclude the applicants, either before the commencement of the hearing or at any time during the course of the hearing, from participating in negotiations with a view toward establishing a share-time agreement among themselves.

6. *Petitions to Deny.* On May 1, 1991, WSKG and David A. Martin, Executive Director of Arrowhead, filed petitions to deny Uhuru's renewal application. No oppositions were filed. The petitions are essentially predesignation petitions to specify issues, which are no longer permitted. Accordingly, the petitions to deny will be dismissed. *Revised Processing of Broadcast Applications*, 72 FCC 2d 202, 214-15 (1979). These issues can be raised before the presiding Administrative Law Judge as may be appropriate.

7. Except as may be indicated by any issues specified below, the applicants are qualified to operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding upon the issues specified below.

8. Accordingly, IT IS ORDERED, that pursuant to § 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether Uhuru has violated 47 C.F.R. §§ 73.1740 and/or 73.1750, and, in light of the evidence adduced, whether Uhuru is qualified to be and remain a licensee of the Commission.
2. To determine whether WSKG has reasonable assurance of the availability of its proposed transmitter site.
3. If a final environmental impact statement is issued with respect to Uhuru, KSKG and Arrowhead in which it is concluded that the proposed facilities are likely to have an adverse effect on the quality of the environment, to determine whether the proposals are consistent with the National Environmental Policy Act, as implemented by 47 C.F.R. §§ 1.1301-1319.
4. To determine: (a) whether a share-time arrangement among the applicants would result in the most effective use of the channel and thus better serve the public interest, and, if so, the terms and conditions thereof; (b) the extent to which each of the proposed operations will be integrated into the overall cultural and educational operations and objectives of the re-

spective applicants; and (c) whether other factors in the record demonstrate that one applicant will provide a superior FM educational broadcast service.

5. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

9. IT IS FURTHER ORDERED, That, in accordance with paragraph 4 hereinabove, Uhuru, KSKG and Arrowhead shall each submit the environmental assessment required by 47 C.F.R. § 1.1311 to the presiding Administrative Law Judge within 30 days of the release of this Order, with a copy to the Chief, Audio Services Division.

10. IT IS FURTHER ORDERED, That a copy of each document filed in this proceeding subsequent to the date of adoption of this Order shall be served on the counsel of record in the Hearing Branch appearing on behalf of the Chief, Mass Media Bureau. Parties may inquire as to the identity of the counsel of record by calling the Hearing Branch at (202) 632-6402. Such service shall be addressed to the named counsel of record, Hearing Branch, Enforcement Division, Mass Media Bureau, Federal Communications Commission, 2025 M Street, N.W., Suite 7212, Washington, D.C. 20554. Additionally, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Federal Communications Commission, Room 350, 1919 M Street, N.W., Washington, D.C. 20554.

11. IT IS FURTHER ORDERED, That to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to 47 C.F.R. § 1.221(c), in person or by attorney within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

12. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to § 311(a)(2) of the Communications Act of 1934, as amended, and 47 C.F.R. § 73.3594, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g).

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau